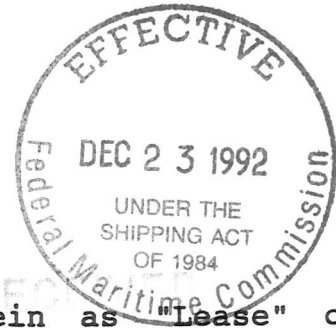


224-200709



LEASE AGREEMENT

THIS Lease Agreement (referred to herein as "Lease" or "Agreement") made as of this 22nd day of December, 1992, by and between THE BOARD OF TRUSTEES OF THE GALVESTON WHARVES, an agency of the City of Galveston, Texas (hereinafter referred to as "Wharves"), and SEATRUCK TEXAS, INCORPORATED, a Texas corporation (hereinafter referred to as "SeaTruck").

W I T N E S S E T H :

1. Leased Premises, Apron and Berth.

For and in consideration of the rentals to be paid to Wharves by SeaTruck hereunder and the covenants and agreements of Wharves and SeaTruck contained herein, Wharves hereby leases to SeaTruck, and SeaTruck hereby leases from Wharves, for the lease term and upon the terms and conditions set forth below the property (hereinafter referred to as the "Facility Tract," the "Facility," or the "Leased Premises" in the City and County of Galveston, Texas, reflected in and outlined in red on Exhibit A attached hereto and made a part hereof for all purposes, and to which SeaTruck shall have exclusive right of occupancy. The lease area shown on Exhibit "A" is, however, subject to an aerial easement for components of the grain elevator over the one hundred (100) foot wide parcel of the Leased Premises lying between the elevator property and the Piers 30 and 32 sheds, which includes the right to maintain and repair such components, provided that such maintenance and repair shall not unreasonably interfere with the use of such parcel by Wharves or its lessees, and subject to revision based on the survey of the area anticipated to be provided to SeaTruck. The

parties anticipate that SeaTruck shall have two (2) weeks from its receipt of the survey to object to the description and title of such area. The Wharves shall have four (4) weeks from its receipt of such objections to cure them. Upon agreement of SeaTruck and Wharves of the need to correct the property description, a new Exhibit "A" based upon an agreed revised area shall be prepared for attachment to the lease.

In addition to grant of the Leased Premises, Wharves grants to SeaTruck a Preferential Assignment of a berth adjacent to the Leased Premises at Pier 34. Preferential Assignment is defined as an assignment of berth for vessels of SeaTruck which is not absolute to the exclusion of other vessels which Wharves may deem proper to assign to such space; however, Wharves may not assign vessels of others to such space at any time which would unreasonably interfere with the berthing, loading or unloading of SeaTruck's "RORO" vessels.

Wharves also grants unto SeaTruck the full use of the Pier 34 apron adjacent to the Leased Premises for the purpose of loading, unloading, and accessing "RORO" vessels calling at the Facility.

TO HAVE AND TO HOLD the Leased Premises unto SeaTruck for the purposes and uses, upon the conditions, and for the terms set forth below.

2. Lease Term and Termination Right.

(a) Term. Subject to the provisions hereof, the term of this Lease Agreement shall be for a period of twenty-five (25) years commencing on the Effective Date of this Lease.

(b) SeaTruck Termination. However, SeaTruck shall have the right to terminate this Lease at any time after the first twelve (12) months of the term of this Agreement by serving written notice of termination upon Wharves of its intent to terminate, such termination to take effect six (6) months from the date Wharves receives said notice (i.e., effective no sooner than eighteen (18) months from commencement of the Lease Term); provided that upon such termination, SeaTruck shall have the right to remove any improvements it has added to the Leased Premises, except that it shall leave all lighting, all improvements to Plant 14 (identified on Exhibit "A"), and any other improvements affixed to the realty, title to which shall vest in Wharves upon such termination. Any other improvements, including inspection booths, scales, and interchange lane facilities, including movable equipment, furniture, fixtures or portable buildings shall be removed by SeaTruck upon the termination of this Lease due to such cancellation. SeaTruck shall make such repairs as may be necessary to the Leased Premises caused by its removal of its improvements so as to leave the surface of the Leased Premises in a usable, tenantable condition.

(c) Wharves Termination. In the event a vessel has not called at the Facility for the loading of trailers by September 1, 1993, then Wharves shall have the right to terminate this Lease upon giving SeaTruck written notice of intent to terminate, such termination to become effective thirty (30) days from SeaTruck's receipt of such written notice.

3. Rental.

As rental during the term of this Lease, Wharves shall receive:

- (a) Dockage: Dockage at the rate of \$2.00 per lineal ship foot for the first twenty-four (24) hours, then a prorata payment per hour thereafter. After the first twelve (12) months of this Lease, such dockage rate shall increase to \$2.75 per linear ship foot for the first twenty-four (24) hours, then prorata per hour thereafter.
- (b) Wharfage: For the first twelve (12) months of this Lease, \$10.00 per loaded trailer as per monthly SeaTruck manifest, payable monthly in arrears. After the first 12 months, \$11.50 per loaded trailer as hereinabove indicated.
- (c) Escalation: Upon the expiration of the first five (5) years of this Lease, and at 5-year intervals thereafter, wharfage and dockage rates in effect at the time of such adjustments will be escalated or de-escalated. Rates will increase or decrease in proportion to changes in the Implicit Price Deflator of the Gross Domestic Product as determined by the United States Department of Commerce.

4. Minimum-Volume Guarantee.

From the Commencement Date, SeaTruck shall guarantee Wharves monthly revenues to adequately compensate the Wharves for its cost in connection with this Agreement. During the first ninety (90) days from the Commencement Date, should Wharves' monthly revenues from dockage and wharfage fall below the sum of \$15,000.00, then SeaTruck shall pay to Wharves within thirty (30) days of the end of each calendar month next following the month in question an amount equal to the difference between \$15,000.00 and the monthly revenues actually collected by Wharves from the SeaTruck operation on the Leased Premises. During months four (4) through twelve (12), such minimum revenue guarantee shall be \$30,000.00 per month.

Thereafter, such monthly minimum guarantee shall be \$40,000.00 per month during the term of this Lease.

5. Effective Date of Agreement.

It is agreed that this Agreement or any amendment or modification thereto shall be submitted to the Federal Maritime Commission (the Commission), pursuant to the terms of the Shipping Act. The Effective Date of this Agreement shall be the date upon which the Commission specifies the Effective Date of this Agreement in its approval thereof or advises Wharves that the Agreement does not require its approval, all under the provisions of 46 U.S.C. §814. If the Commission, by order, disapproves any proposed amendment or modification of this Agreement, then this Agreement shall continue in force and effect as though unmodified and not amended. This Agreement and any such proposed amendment or modification shall be null and void and of no force and effect, and no part of this Agreement or any amendment to this Agreement shall be carried out directly or indirectly prior to the approval by order of the Commission of this Agreement or any amendment to this Agreement, or the notification by the Commission to Wharves in writing to the effect that the Agreement or any modification or amendment of this Agreement does not require it to be filed with the Commission. Any extension of this Agreement, and the terms and conditions thereof, will be promptly filed with the Commission for its review and approval, if required. Upon execution of this Agreement, Wharves shall promptly file it with the Commission for appropriate Commission action.

6. Commencement Date Defined.

The Commencement Date shall be the date upon which the first vessel for loading shall have arrived at the Leased Premises. Although this Agreement shall become effective as hereinbefore provided, the obligation to pay rentals and other charges and the provision for Minimum-Volume guarantee shall begin upon the Commencement Date.

7. Construction by SeaTruck.

SeaTruck shall construct or cause to be constructed improvements on the Leased Premises consisting of covered interchange lanes, gates, two truck scales, perimeter security fencing, area lighting, and leveling and preparation of the Leased Premises with shell, stabilized with cement and compacted sufficiently to support the operations of loaded trucks and trailers over and on the Facility. Prior to such construction, however, SeaTruck shall submit plans and specifications for such improvements to the Leased Premises to the Director of Port Facilities of Wharves for prior approval, which approval shall not be unreasonably withheld.

8. Permits and Government Approvals.

SeaTruck shall secure any and all necessary permits and/or governmental approvals for the construction and improvement of the Facility Tract, and for its conducting its operation on the Facility Tract.

9. Mechanics and Materialmens Liens.

SeaTruck agrees that in the event any mechanics', materialmens' or similar lien is created by virtue of SeaTruck's construction or contracts for construction upon the Facility Tract, or the leasehold created hereunder, then SeaTruck will cause the same to be discharged in the ordinary course of business and within a reasonable time; provided, SeaTruck may contest the amount or validity of the same in good faith with any pending execution thereof appropriately stayed.

10. Wharves Site Preparation.

In connection with Wharves' participation in site preparation, Wharves agrees as follows:

(a) Plant 14 is a building located within the Leased Premises marked "Plant No. 14" on Exhibit "A." Wharves presently occupies said building and agrees to vacate it for SeaTruck's use.

(b) All materials and equipment located in the existing Wharves maintenance area and at or about Plant 14 shall be removed by Wharves. Wharves agrees to leave all fenced enclosures, including gates, located in the interior of Plant 14 intact.

(c) Wharves, at its cost, shall provide storm-sewer drainage of the area of the Leased Premises formerly occupied by the Pier 34 slip.

(d) Wharves intends to remove from its Plant 4 location and haul to the Leased Premises all available shell presently located at Plant 4. Wharves shall haul said shell to the Leased Premises and dump it as directed by SeaTruck, but Wharves shall have no

responsibility to spread or otherwise work the shell at the Leased Premises.

(e) Wharves shall, at its cost, scrape the grass growing on the Leased Premises formerly occupied by the Pier 34 slip. This material will be stacked for removal by SeaTruck prior to the drainage and shell relocation work being performed.

11. Control and Use of Facilities

SeaTruck shall have the exclusive use of the Leased Premises for development and operation of a truck-trailer RORO operation. SeaTruck shall arrange for and provide any utilities required for its operation on the Leased Premises.

12. Maintenance Obligation.

SeaTruck accepts the Leased Premises in its present condition and acknowledges that no warranties, either express or implied, have been made by Wharves with respect to the Leased Premises.

Except as otherwise provided herein, SeaTruck, at its own cost and expense, shall and will at all times during the term of this Lease, or any extension or renewal thereof, keep the Leased Premises in a safe and clean condition. SeaTruck shall also promptly repair any damage to Wharves' property caused by or arising out of SeaTruck's operation as described herein. SeaTruck shall further insure that the Leased Premises, its machinery and its equipment thereon, comply with all federal, state and municipal laws and ordinances, regulations and requirements' and SeaTruck will make such repairs to the Leased Premises and improvements on the Leased Premises as may be required by any such laws,

ordinances, regulations or requirements, at SeaTruck's cost. Notwithstanding anything to the contrary herein contained, SeaTruck shall have the right, at its own cost and expense, to contest the extent or validity of any such standard, law, ordinance, regulation, or requirement, and shall not be in default hereunder for so long as such contest or litigation relating thereto is diligently prosecuted and for a reasonable time thereafter.

13. Wharves Tariffs.

Except as otherwise provided in this Agreement, Wharves' tariffs as duly published and filed with the Federal Maritime Commission shall be applicable and apply to this Agreement, the operation described herein, and the services rendered by Wharves, including, but not limited to, SeaTruck's compliance with Item 109.1 of Wharves' Tariff Circular No. 4-D.

14. Insurance.

(a) SeaTruck shall place and maintain, during the term of this Agreement, fire and extended coverage insurance to insure against casualty loss or damage to the Plant 14 and Pier 33 buildings, insuring such buildings at their replacement cost. Alternatively, at SeaTruck's option, Wharves shall provide such insurance under its general policy, billing SeaTruck annually for the pro-rata portion of the total premium applicable to the Pier 14 and Pier 33 buildings.

(b) SeaTruck shall place and maintain, during the term of this Lease Agreement, property damage and personal liability insurance covering any and all liability arising out of or in

connection with the operation of the Facility, whether occurring on the Leased Premises or on Wharves' property used by SeaTruck under this Agreement. The limit of liability of such insurance shall be in the amount of not less than FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence for property damage, personal injury or death. Nothing herein contained shall prevent SeaTruck's placing, maintaining and paying for insurance in excess of the amount required to be maintained hereunder, nor shall this paragraph affect SeaTruck's right to carry liability insurance solely for its own account. SeaTruck shall, no later than thirty (30) days after the Execution Date of this Lease Agreement, furnish to Wharves a copy of an insurance policy or policies or a binding certificate of insurance, reflecting SeaTruck's compliance with this Paragraph 14.

(c) All insurance specified in this Paragraph 14 shall be obtained from an insurance carrier or carriers authorized to do business in the State of Texas and satisfactory to Wharves. In the event a certificate of insurance is furnished, Wharves reserves the right to require that a copy of such policy or policies be furnished. Such policy or policies shall further provide that such insurance is not subject to change or cancellation until after thirty days' written notice has been given Wharves and SeaTruck. Wharves and the City of Galveston shall be listed as additional insureds under such policies and such policy or policies shall contain a cross-liability clause.

15. Natural Disaster.

In the event of any natural disaster (including but not limited to fire, explosion, windstorm, flood or vessel collision) which damages or destroys a portion or all of the Facility, it shall be the continuing obligation of SeaTruck, during the period of any repair, rebuilding or replacement, to pay the Rental (dockage and wharfage) without interruption and to comply with all of the terms, covenants and conditions of this Lease, so long as the damage or destruction does not unreasonably interfere with SeaTruck's operation of the Facility. In the event of damage or destruction of the Facility or the berth at Pier 34 (including any blocking of the berth) which does interfere with SeaTruck's operation of the Facility and use of said berth, then the minimum-volume guarantee provided in Paragraph 4 hereof shall be suspended for and during the time that it takes to repair and restore the Facility and berth. Should Wharves be able to provide an alternate berth or berths, appropriate modification of the minimum-volume guarantee shall be made to take into consideration any delays or increased costs to SeaTruck necessitated by such alternate berth use. In the event that SeaTruck notifies Wharves, which notice shall be in writing and shall be given within ninety (90) days of the occurrence causing the damage or destruction, that SeaTruck has elected not to repair or restore the Facility, the term of this Lease shall cease and expire on the third day after such notice is given, as if such third day were the date originally set forth herein for the expiration of this Lease, provided SeaTruck shall

pay the cost of clearing the Leased Premises (including removal of any rubble or debris). Property insurance proceeds shall be payable to SeaTruck and/or Wharves as their interest may appear.

16. Liability and Indemnification

(a) Since SeaTruck shall have control of the Leased Premises, SeaTruck agrees to indemnify and save harmless Wharves from any claims for damages to any person or group of persons or property of others which might occur on account of the use or occupancy of the Facilities by SeaTruck, its agents, servants, employees, licensees and invitees; except for such damages as may be proximately caused by the negligent acts or omissions of Wharves, its agents, servants or employees.

(b) It is expressly agreed and understood that the City of Galveston shall never be liable to respond to damages or make indemnity or contribution, or the payment of any character from any source other than from income and revenues arising from the operation of the property operated by the Board of Trustees of the Galveston Wharves by reason of, due to or caused by a breach of this Agreement. Further, the members of the Board of Trustees of the Galveston Wharves, either singularly or collectively, shall not be personally liable on this Agreement or for any breach thereof.

17. Demolition and Lease Expansion.

(a) Farmland Elevator Property. SeaTruck expects the quantity of business under this Agreement shall become so great that it will need additional land. It desires to sub-lease the western most, unimproved portion of the Farmland Elevator property

lying east of and adjacent to the Leased Premises. Should SeaTruck desire to attempt to effect a sub-lease of said property from Farmland Industries, Wharves agrees to use its best efforts to assist SeaTruck in obtaining such sub-lease.

(b) Pier 33 Shed Demolition. The Pier 33 shed is denoted on Exhibit "A" and marked "Pier 33." Such shed is included within the Leased Premises. Should the business at the Leased Premises so increase during the term hereof as to justify the demolition of the Pier 33 shed, SeaTruck shall submit to Wharves a request and justification for such demolition, including a usage plan. If Wharves determines such demolition to be justified by additional business, it shall consent to such demolition of the Pier 33 shed at SeaTruck's expense, and such consent shall not be unreasonably withheld.

(c) Pier 36 Shed and Berth. Should the business at the Leased Premises so increase during the term hereof as to justify expansion of the Leased Premises to the Pier 36 Shed and Berth area, SeaTruck shall submit to Wharves a request and justification of demolition of the Pier 36 shed and repair of the Pier 36 facilities, including a usage plan. If Wharves determines such action to be justified by additional business, it shall consent to SeaTruck's removal of the Pier 36 shed and the making of repairs to the bulkhead and apron, at which time this Lease Agreement shall be amended to include such additional area within the terms of this Lease. In this connection, Wharves consent shall not be

unreasonably withheld, but Wharves shall have the right of approval of any proposed contract for such demolition and repairs.

18. Spur Track. There exists within the Leased Premises a railroad spur track of approximately 2,800 feet in length. In this connection, SeaTruck shall have the right to pave over the spur track, leaving the exposed rail, at SeaTruck's expense.

19. Crossing Maintenance. All railroad crossings on old Port Industrial Boulevard, and all road surfaces lying between the ties, shall be leveled and maintained by Wharves to assure smooth passage of large 18-wheel tractor and trailer rigs. The volume of said movement is expected to be approximately 2,000 units per month initially, increasing to 4,000 units per month. In no event, however, would Wharves be required to spend more than \$25,000.00 for such maintenance during any one calendar year.

20. Performance Timetable. SeaTruck and Wharves shall endeavor to perform each of their respective obligations under this Agreement with a view toward having the Facility ready to operate as a truck trailer "RORO" terminal, with first ships' call in June of 1993. SeaTruck shall begin construction described in Paragraph 7 hereof on or before April 1, 1993, and shall have completed such work on or before June 30, 1993. Wharves shall begin site preparation described in Paragraph 10 hereof on or before January 1, 1993, and shall have completed such site preparation on or before April 1, 1993.

21. Breaches and Default.

In the event either Wharves or SeaTruck breaches or defaults in respect of any of the covenants, conditions and agreements herein contained and on the respective parties' parts to be performed, then the aggrieved party shall have the right to terminate this Lease by thirty (30) days' written notice (except that the applicable period shall be ten (10) days with respect to any default by SeaTruck regarding its obligation to pay rental or other monies due Wharves) to that effect specifying the breach or default relied upon given to the other party and, in case of Wharves taking such action, to enter upon the Leased Premises upon such termination, recover possession of the same, and take such action and proceedings as may be necessary to protect the interest of Wharves. If, however, the defaulting party remedies all such breaches or defaults within said thirty (30) day period or ten (10) day period, as may be applicable, or for so long as the defaulting party proceeds in good faith and with due diligence to remedy any breach or default which cannot reasonably be corrected within said thirty (30) day period, such notice shall be of no effect, and this Lease shall continue in force in the same manner as if no such breach or default had occurred. In addition to the rights specified herein, the aggrieved party shall have all other rights permitted by law.

22. Agreement Effect and Interpretation.

This Lease Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated

herein, provided, however, that nothing herein shall prevent the parties hereto from entering into any other agreements in connection therewith. The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Texas. Obligations under this Agreement shall be performed in Galveston, Texas, and be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto and their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Lease Agreement.

23. Taxes, Assessments and Other Expenses

SeaTruck shall bear all costs and expenses arising out of its possession of the Facilities and operations, and Wharves shall have no responsibility therefor.

24. Notices.

All tenders, notices, demands and consents permitted or required by this Lease shall be in writing and shall be validly and sufficiently made or given if mailed by registered or certified mail, postage prepaid, addressed as follows:

(a) If intended for Wharves:

General Manager
The Galveston Wharves
P. O. Box 328
Galveston, Texas 77553

(b) If intended for SeaTruck:

Mr. Jeffere F. Van Liew, Chief
Executive Officer
SeaTruck Texas, Incorporated
1350 Nasa Road One
Houston, Texas 77058

Any such notice, demand or consent may be given, if by Wharves, by its General Manager and, if by SeaTruck, by its Chief Executive Officer or President. The parties may change the name and address of the designee to receive notice by written notice of same in the manner provided herein.

25. Memorandum of Lease.

Each party will, at any time upon the written request of the other party, promptly execute in multiple counterparts an instrument in recordable form which will constitute a Memorandum of Lease setting forth a description of the Leased Premises, the term of this Lease, and any other provision hereof reasonably requested by either party.

26. Legal Construction.

If any term, covenant, condition or provision of this Lease, or the application thereof to any person or circumstance, shall ever be held to be invalid or unenforceable, then in each such event the remainder of this Lease or the application of such term, covenant, condition or provision to any other person or any other circumstance (other than those as to which it shall have been held invalid or unenforceable) shall not be thereby affected, and each term, covenant, condition and provision hereof shall remain valid and enforceable to the fullest extent permitted by law.

27. Eminent Domain.

If any legally constituted authority, other than Wharves, with power to do so takes any portion of the Leased Premises while this Lease is in force and effect, under the power of eminent domain or otherwise, (a) the proceeds of such condemnation award shall be paid first to Wharves in an amount equal to the fair market value of that portion of the Facility Tract so taken, and any excess proceeds remaining after such payment to Wharves shall be paid to SeaTruck; (b) this Lease shall terminate as to the part so taken; and (c) Rental thereafter shall be proportionately reduced in the proportion that the loss of functional use of the part so taken bears to the total functional use of the Leased Premises.

SeaTruck shall have the option to terminate this Lease if title to all or substantially all of the Facility Tract shall have been taken or condemned by a competent authority for a public use or purpose to such an extent that SeaTruck is prevented from using the Facility for its normal purposes. To exercise such option, SeaTruck shall give Wharves thirty (30) days written notice, specifying therein the date of termination.

28. Waiver.

Any waiver at any time of a breach or default of any of the conditions of this Lease shall extend only to the particular breach or default so waived and shall in no way impair or affect the continued application of such conditions nor deprive either party of its remedies arising out of any subsequent breach or default hereunder.

29. Successors and Assigns.

SeaTruck may assign or sublet all of its rights and obligations hereunder provided that the prior written approval of Wharves is first obtained, which approval shall not unreasonably be withheld; provided further, that no assignment or subletting shall relieve SeaTruck from its obligation herein except to the extent its obligations are actually performed by the assignee or sublettee.

30. Authority of Parties and Warranties.

Wharves and SeaTruck each represent that it has full power and authority to consummate the transactions contemplated in this Lease, and that this Lease does not conflict with or result in a breach of or constitute a default under any contract, indenture, bond resolution, or other agreement or instrument by which the party making the representation or its properties are bound, or any order, rule, regulation, or writ of any court, agency, or other governmental authority having jurisdiction in the premises.

IN WITNESS WHEREOF, Wharves has caused these presents to be duly executed by authority of a resolution adopted by its Board of Trustees, and SeaTruck has caused these presents to be duly executed by authority of a resolution duly adopted by its Board of Directors all as of the day and year first above written.

THE BOARD OF TRUSTEES OF
THE GALVESTON WHARVES

ATTEST:



By:



General Manager

LESSOR

ATTEST:

SEATRUCK TEXAS, INCORPORATED

By: [Signature]
President

[Signature]

LESSEE

THE STATE OF TEXAS *

*

COUNTY OF GALVESTON *

This instrument was acknowledged before me on the 22 day of December, 1992, by Ahove, General Manager of The Galveston Wharves, on behalf of the said Galveston Wharves.

[Signature]
Notary Public, State of Texas

My Commission Expires:

5/23/96

THE STATE OF TEXAS *

*

COUNTY OF Galveston *

This instrument was acknowledged before me on the 22 day of December, 1992, by Ahove, President of SeaTruck Texas, Incorporated, on behalf of said corporation.

[Signature]
Notary Public, State of Texas

My Commission Expires:

5/22/96

EXHIBIT "A"

LEASE TO SEATRUCK TEXAS

THE BOARD OF TRUSTEES OF THE GALVESTON WHARVES

DECEMBER 1992

SCALE: 0 125 250 500 FEET

